

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DALE GARCIA, JANA
ARCHAMBEAU,

Plaintiffs,

v.

THOMAS BENENATI, et al.

Defendants.

CASE NO. C19-5597 BHS

ORDER GRANTING IN PART
AND DENYING WITHOUT
PREJUDICE IN PART
DEFENDANT BENENATI'S
MOTION FOR SUMMARY
JUDGMENT

This matter comes before the Court on Defendant Thomas Benenati's motion for summary judgment. Dkt. 30. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants in part and denies without prejudice in part the motion for the reasons stated herein.

I. FACTUAL & PROCEDURAL BACKGROUND

Plaintiffs Dale Garcia and Jana Archambeau's claims arise out of alleged excessive use of force by a Washington State Parks ranger, Defendant Thomas Benenati. On June 9, 2018, Plaintiffs, who are husband and wife, were visiting Paradise Point State Park in Clark County, Washington when Archambeau drove the wrong direction down a one-way park road. Dkt. 1, ¶ 4.2. Benenati pulled Archambeau over to issue a citation for

1 excessive speeding, and Archambeau told Benenati that her husband would be upset and
2 “will kill me.” Dkt. 31-1 at 4. Benenati’s report states that he believed Archambeau to be
3 genuinely fearful and distraught. *Id.* Garcia then arrived, and Benenati instructed him to
4 stop but Garcia did not comply. *Id.* at 5. Garcia and Benenati then engaged in a lengthy
5 physical struggle, and Benenati utilized every force tool he possessed: OC spray,
6 TASER, baton, and he eventually drew his firearm. *See id.* at 5–6. After approximately
7 seven minutes of forceful struggle, Benenati handcuffed Garcia. *Id.* at 6.

8 Garcia provides court documents to establish that he was then charged with
9 Resisting Arrest and Assault III by Clark County. *See* Dkt. 37-1. He made his initial
10 appearance on June 11, 2018 and was held in custody. On June 14, 2018, the Clark
11 County Prosecutor moved for, and the state court granted, exoneration of bail for further
12 investigation. *Id.* at 11. In his deposition, Garcia testified that it was his understanding
13 that the Clark County Prosecutor decided not to file charges against him. Dkt. 31-3 at 12.

14 On July 1, 2019, Plaintiffs sued Benenati, the State of Washington, the
15 Washington State Parks and Recreation Commission, and four Parks supervisors as
16 Defendants for violations of Garcia’s civil rights and common law malicious prosecution.
17 Dkt. 1. The parties have since stipulated to the dismissal of all Defendants, save for
18 Benenati. *See* Dkts. 20 (dismissing without prejudice all claims against Defendants State
19 of Washington and Washington State Parks and Recreation Commission), 29 (dismissing
20 all federal claims with prejudice and all state law claims without prejudice as to Parks
21 supervisor Defendants).

On October 15, 2020, Benenati moved for summary judgment on five issues: Plaintiffs' Fourteenth Amendment claims; claims against Benenati's ex-wife, Defendant Loretta Benenati; malicious prosecution claim; punitive damages; and qualified immunity. Dkt. 30. Plaintiffs requested additional discovery to oppose the motion, and the parties stipulated to an extension for the issues of qualified immunity and punitive damages. Dkt. 34. On November 3, 2020, Plaintiffs responded, Dkt. 36, and conceded the dismissal of their Fourteenth Amendment claims and their claim against Loretta Benenati, *id.* at 1–2.¹ On November 6, 2020, Benenati replied. Dkt. 41. The only remaining issue before the Court on this motion is Plaintiffs' malicious prosecution claim.

II. DISCUSSION

Benenati argues that he is entitled to summary judgment on Plaintiffs' malicious prosecution claim because there is no admissible evidence to establish that Garcia was in fact prosecuted.

A. Summary Judgment Standard

Summary judgment is proper only if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party is entitled to judgment as a matter of law when the nonmoving party

¹ The Court therefore **GRANTS** Benenati's motion for summary judgment on Plaintiffs' Fourteenth Amendment claim and **DISMISSES with prejudice all claims against** Loretta Benenati.

1 fails to make a sufficient showing on an essential element of a claim in the case on which
2 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
3 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
4 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
5 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
6 present specific, significant probative evidence, not simply “some metaphysical doubt”).
7 Conversely, a genuine dispute over a material fact exists if there is sufficient evidence
8 supporting the claimed factual dispute, requiring a judge or jury to resolve the differing
9 versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W.*
10 *Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

11 The determination of the existence of a material fact is often a close question. The
12 Court must consider the substantive evidentiary burden that the nonmoving party must
13 meet at trial—e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
14 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
15 issues of controversy in favor of the nonmoving party only when the facts specifically
16 attested by that party contradict facts specifically attested by the moving party. The
17 nonmoving party may not merely state that it will discredit the moving party’s evidence
18 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
19 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
20 nonspecific statements in affidavits are not sufficient, and missing facts will not be
21 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888–89 (1990).

B. Merits

A plaintiff must prove the following elements to establish a malicious prosecution claim under Washington state law:

(1) that the prosecution claimed to have been malicious was instituted or continued by the defendant; (2) that there was want of probable cause for the institution or continuation of the prosecution; (3) that the proceedings were instituted or continued through malice; (4) that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; and (5) that the plaintiff suffered injury or damage as a result of the prosecution.

Hanson v. City of Snohomish, 121 Wn.2d 552, 558 (1993) (quoting *Peasley v. Puget Sound Tug & Barge Co.*, 13 Wn.2d 485, 497 (1942)). Benenati argues that Plaintiffs cannot establish a malicious prosecution claim because there is no evidence that proceedings against Garcia were ever instituted or commenced and relies on Garcia's deposition testimony to support his argument. Dkt. 30 at 6–7.

In his deposition, Garcia testified that it was his understanding that the Clark County Prosecutor decided not to file charges against him, and Plaintiffs argue that this statement is hearsay when offered to prove the actions of the prosecutor. Dkt. 36 at 4. Plaintiffs also argue the statement is inadmissible evidence because Garcia's understanding is not based on personal knowledge. To establish that proceedings were in fact commenced against Garcia, Plaintiffs provide the court proceedings from *State of Washington v. Garcia* in Clark County Superior Court, Cause No. 18-1-01636-3. *See* Dkts. 37-1, 37-2.

These court documents may establish that court proceedings were initiated against Garcia based on his altercation with Benenati. But Benenati asserts that the records were

1 requested in discovery and were improperly withheld. Dkt. 40 at 2–3. In his first set of
2 interrogatories, Benenati asked Garcia whether he had ever been arrested for, charged
3 with, or convicted of any crime, Dkt. 41-1 at 3, and Garcia’s response did not list the
4 Resisting Arrest and Assault III charges brought by Clark County in June 2018, *id.* at 3–
5 4. Benenati therefore asserts that the Court should not consider the Clark County records
6 in deciding summary judgment because the records were not disclosed as requested
7 during discovery.

8 The Federal Rules of Civil Procedure dictate that if a party fails to provide
9 information as required by Rule 26(a) or (e), that party is not allowed to use the
10 information as evidence on a motion. Fed. R. Civ. P. 37(c)(1). Benenati did not request
11 Garcia’s court records pursuant to Rule 26(a) or 26(e); rather, the interrogatory was made
12 according to Rule 26(b) and Rule 33. But even if Rule 37(c) applied, the Court may still
13 consider the evidence if the failure to provide information is substantially justified or is
14 harmless.

15 It is unclear to the Court why Garcia did not name *State of Washington v. Garcia*,
16 Cause No. 18-1-01636-3, in his interrogatory response as it is both within the scope of
17 discovery and directly related to his malicious prosecution claim. But the Court finds no
18 prejudice to Benenati in considering the court documents provided for two reasons. First,
19 the court documents include an arresting officer’s declaration of probable cause signed by
20 Benenati, which may support an inference that Benenati was aware of Garcia’s arrest.²

21 _____
22 ² The Court does note that the declaration of probable cause reads as if Benenati did not
author the document. Regardless, his signature still appears to certify the truth of the statement.

1 See Dkt. 37-1 at 6. Second, Benenati's reply addresses the possibility that the Court
2 would consider the Clark County court documents. See Dkt. 40 at 3–4.

3 Arrest or mere investigation may be insufficient to establish that criminal
4 proceedings were instituted or commenced for a malicious prosecution claim. See
5 Restatement 2d Torts § 654(e) ("If there is nothing more than the false arrest and the
6 accused is released without any further proceeding, his remedy is an action for false
7 imprisonment."); *Richmond v. Thompson*, 79 Wn. App. 327, 345 (1995), *aff'd*, 130
8 Wn.2d 368 (1996) ("Trooper Richmond and other witnesses were interviewed by an
9 investigator who prepared a report, but the State Patrol apparently took no further action.
10 Without more, these facts do not establish a legally adequate claim of malicious
11 prosecution . . ."). The Clark County court documents show more than arrest or mere
12 investigation; viewing the evidence in the light most favorable to Plaintiffs, Garcia was
13 arrested, booked into jail, held, and appeared in court to set bail. This is sufficient to
14 establish for purposes of this motion that criminal proceedings were instituted against
15 Garcia.

16 Benenati's motion for summary judgment as to Plaintiffs' malicious prosecution
17 claim is therefore denied without prejudice. Garcia has established that criminal
18 proceedings were instituted against him, but Benenati's motion did not discuss whether
19 the prosecution was malicious or whether there was probable cause for the proceedings.
20 See *Hanson*, 121 Wn.2d at 558 ("[M]alice and want of probable cause constitute the gist
21 of a malicious prosecution action." (citing *Peasley*, 13 Wn.2d at 497)). Without
22 discussing the essential elements of the malicious prosecution claim, Benenati has not

1 established that he is entitled to judgment as a matter of law on Garcia's malicious
2 prosecution claim.

3 **III. ORDER**

4 Therefore, it is hereby **ORDERED** that Benenati's motion for summary judgment,
5 Dkt. 30, is **GRANTED** in part and **DENIED without prejudice** in part.

6 Dated this 14th day of January, 2021.

7 

8
9 **BENJAMIN H. SETTLE**
United States District Judge